

BODY-WORN CAMERAS: WHAT EVERY TRIAL PROSECUTOR NEEDS TO KNOW

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Substantive Topics Covered

- Camera options
 - Camera placement, clarity, buffering, night vision, visual acuity
- Voir dire
- Foundational requirements
- Camera restrictions
- Redaction
 - Disclosure
 - Trial
 - Public Records



“Study the past if you would define the future.”

— Confucius

- Perspective about where we are and where we are going
- Important for jury selection



A Brief Evolution of Video

- Motion picture cameras invented in the 1890s
 - Under a minute long
- Movies without sound until 1927
 - “Talkies”
- Market for home movie camera - 1930s
 - Developed into the camcorder “boom” of the 1970s



Cell phone video cams start to have 'reel' feel

Ability to take, not just watch, mobile video becoming more common

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By Suzanne Choney

msnbc.com
updated 6/3/2009 8:44:13 AM ET

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Among the features of the new iPhone, expected to be announced next week, may be a video camera and if so, it joins a growing pack of mobiles to include video-recording capabilities.

Plenty of BlackBerrys — the iPhone's main competitor — can shoot video, including the BlackBerry Storm, Curve 8900 and the Bold 9000. The long-awaited Palm Pre, due to go on sale Saturday, will not include a video cam, according to a company spokeswoman.

The ability to take, not only watch, videos on cell phones is becoming more important as a YouTube generation uses their mobiles to either send short video clips as a multimedia message, or to post them the popular video-sharing site.



Camera Characteristics

Mounting Options for Cameras

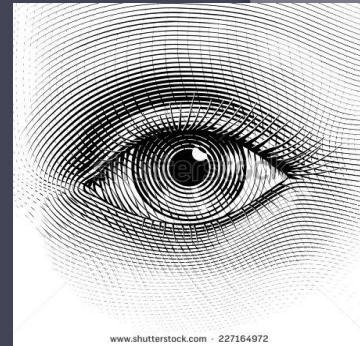


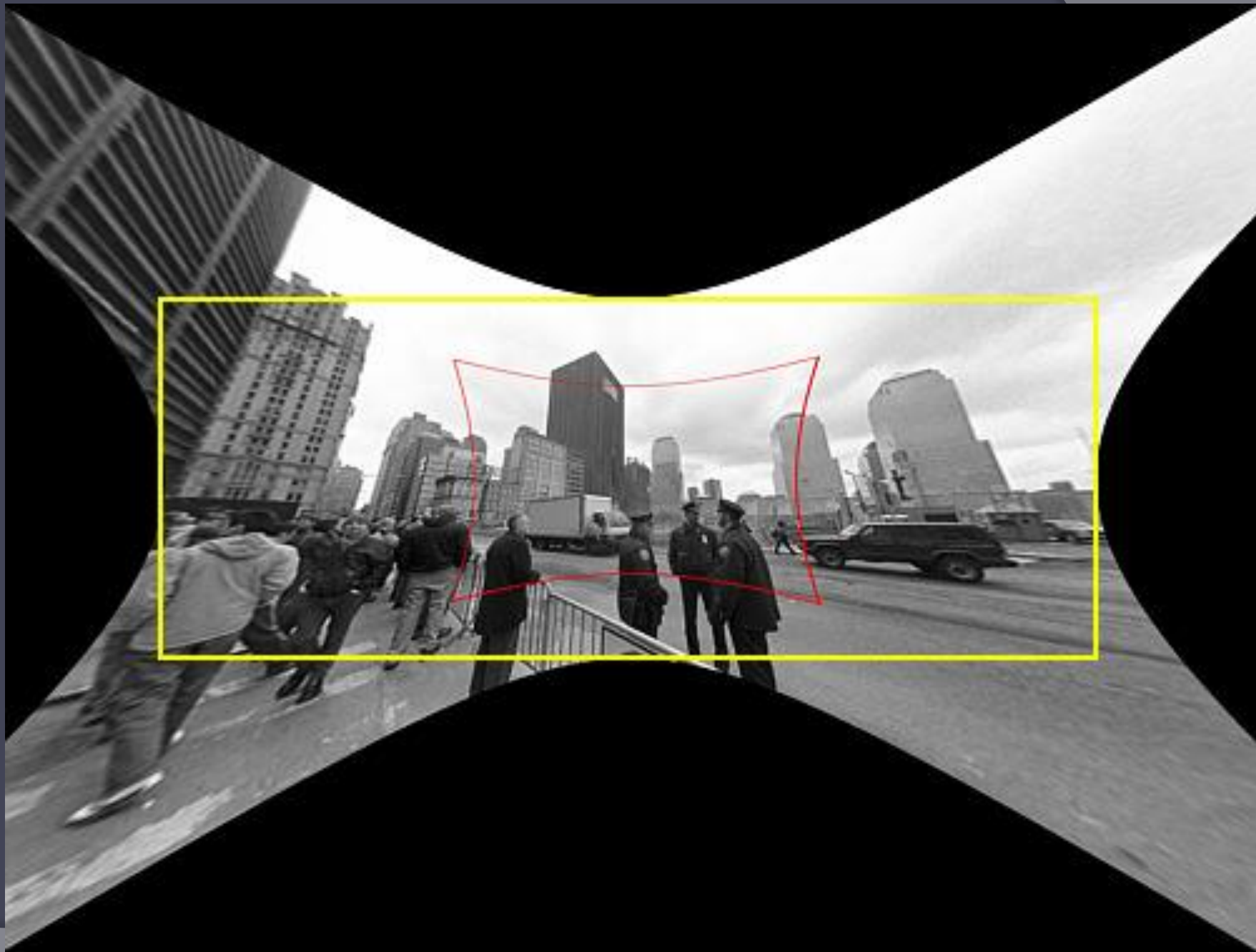
Camera Placement/Officer Stance Impacts View



Camera characteristics impact video image

- Depth and Distance Limitations
- Wide-angle Lenses Distort Images the Farther the Image is Away From the Camera
- Camera *May* See Better in Low Light Than the Human Eye
- Body Worn Cameras (BWCs) Don't Blink and Don't Turn Based on Stimuli







Policy Issues

Policy Issues

- Knowing your agency's policy helps you counter defense arguments or attacks
- If the camera wasn't on, and by policy should have been, make sure you know how you will address this with your officer



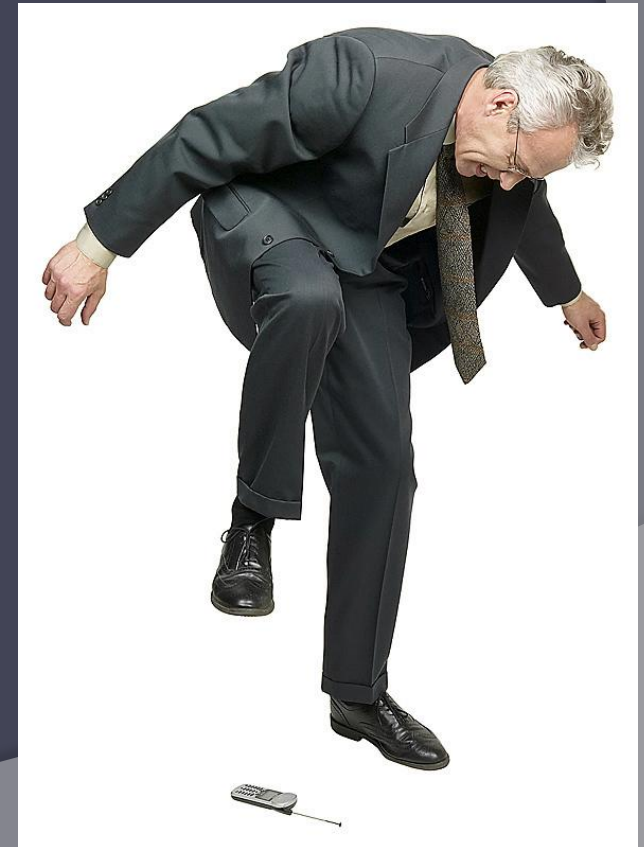
Police Policy Choices – a high level view

- When to turn off and on
- Whether to view prior to writing report
- Whether to view prior to answering post-shooting
- Investigations
- Type of discipline for policy infractions
- Supervisor review
- Ability to use for training



Voir Dire

Who do I want on my jury?



Voir Dire Questions

- Do you have a strong opinion about whether or not police officers should use body-worn cameras?
- Do you believe police officers should be required to wear body cameras at *all* times? Should they be required to record administrative tasks, such as completing paperwork related to an investigation?



Voir Dire Questions

- Do you agree that officers should be able to review video-camera footage captured by their body camera before writing their report in an investigation? What about footage captured by a security camera? By a witness's cell phone?
- If you don't believe they should review footage prior to writing the report, why do feel that way?
 - Policy variations



Voir Dire Questions

- Given that police investigations could involve multiple locations, multiple officers, and cover extended time periods, can you envision scenarios when it might not be appropriate or necessary for every officer to record every aspect of an investigation?
- Do you have a strong preference for dashboard cameras or body-worn cameras, given that both technologies have limitations?



Voir Dire Questions

- Would you be able to judge the evidence fairly if not all of the information related by witnesses is recorded by a video camera?
- Would you be able to keep an open mind and judge the evidence fairly if eye-witness testimony is in addition to, or different than, what is captured by a video camera?
- Would you require video evidence or surveillance footage to find someone guilty of a crime, or would witness testimony be enough?



Voir Dire Questions

- Do you have any experience with the use of video cameras in law enforcement?
- In your personal life, are you involved in video production, editing, or any activity gives you more knowledge than the average person when it comes to video recording?



Voir Dire Questions

- Do you have any training or experience with operating or maintaining body cameras, vehicle dashboard cameras or other video-recording devices, such as a GoPro camera?
- Have you ever been required to wear a body-worn camera for your job?
- Have you been employed in a job that used surveillance video?



Voir Dire Questions

- Do you have a dashboard camera on your personal vehicle?



Voir Dire Questions

- Some of the language or images captured by video in this case may be graphic. Will you be able to judge fairly when asked to view or listen to graphic images or audio?



Voir Dire Questions

- Due to the Rules of Evidence or Rules of Criminal Procedure, some information on police body-worn cameras may not be shown to you as a juror. Would you hold it against either the State or the Defendant if you viewed video footage and noticed a time gap or redaction?
- If video was supplemented with witness testimony, would you have difficulty considering evidence that was not recorded, was not visible or audible, or that was obstructed because of camera angle or position?





Foundation

Performance on a poor foundation.....



DanBee.com

Foundation

- Will go over basic foundation
- Can't imagine a judge entertaining the argument that video itself isn't reliable as a scientific medium
 - "...the requirements for admission of a video recording should be the same as for a photo, that it fairly and accurately depicts that which it purports to show."
 - *State v. Paul*, 146 Ariz. 86, 703 P.2d 1235 (App. 1985)



Objection to Foundation



- The party who is making the objection must indicate how the foundation is lacking, and the party moving for admission must be given opportunity to cure.
 - *State v Rodriguez*, 186 Ariz. 240, 250, 921 P.2d 643, 653 (1996)
 - *State v Guerrero*, 173 Ariz. 169, 171, 840 P.2d 1034, 1036 (App. 1992)
 - *Packard v Reidhead*, 22 Ariz. App 420, 423, 528 P.2d 171, 174 (1974)

The officer was qualified to use the camera

- Have officer go over his training.
- It may be a good visual to have the officer physically demonstrate how the camera works.
- Is the camera ever used by another officer?
- What are the docking and downloading procedures? Have officer walk jury through what he does during or at the end of his shift as it relates to the camera.
- Ask the officer about his ability to edit – major video vendors do not allow the officer to edit.
- Have officer explain “tagging” vs editing.



Chain of custody

- A trial court “must be satisfied that the record contains sufficient evidence to support a jury finding that the offered evidence is what the proponent claims it to be. The [court] does not determine whether the evidence is authentic, but only whether evidence exists from which the jury could reasonably conclude that it is authentic.”

State v Lavers, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991)



Other jurisdictions

- Proper authentication found when:
 - Officer testified he was in charge of video surveillance of this operation;
 - He installed and retrieved videos during drug buys;
 - He hooked up the body camera on the involved officer;
 - He transported the videos to court.
 - *State v. Housley*, 922 So.2d 659 (La. App. 2006)

Officer Recognizes the Footage

- Have the officer view the video prior to trial.
- Ensure he recognizes it as footage from the event.
- Establish that he can state it accurately depicts the event.
 - Video does not have to be *perfectly* (emphasis added) accurate to be admissible—it does need to be a reasonably faithful representation.
 - *State v. Haight-Gyuro*, 218 Ariz. 356, 186 P.3d 33 (App. 2008)



Audit trail- Viewu

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				Public Record Request -Allen Beasley
				Md5 verification request for legal.
				Legal Unit

Audit trail - Viewu

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Audit trail – Taser Axon



Maricopa County Attorneys Office - AZ
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EVIDENCE AUDIT TRAIL

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Uploaded	19 Apr 2016 15:59:37		
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Unique ID	6D3270D75E7A444C8A963A378D69C00C		
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		Video playbacks	
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#	Date	Time	User	Activity
1	13 May 2016	11:03:01 (-07:00)	System	Evidence copy created at agency Maricopa County Attorneys Office - AZ
2	13 May 2016	11:08:09 (-07:00)	Quinn, Kellen (Badge ID: [REDACTED]) Username: [REDACTED]	Shared with camrenc@mco.maricopa.gov. Share expires on 06 Feb 2019 11:08:08 (-07:00)

Civil § 1983 Action

Plaintiff (who is representing himself) claims that the body-camera footage is false - the City of Phoenix Police Department "cloned" his likeness and put it on the video. He claims he can prove the footage is false because in one shot, the image of a head appears in the sky.



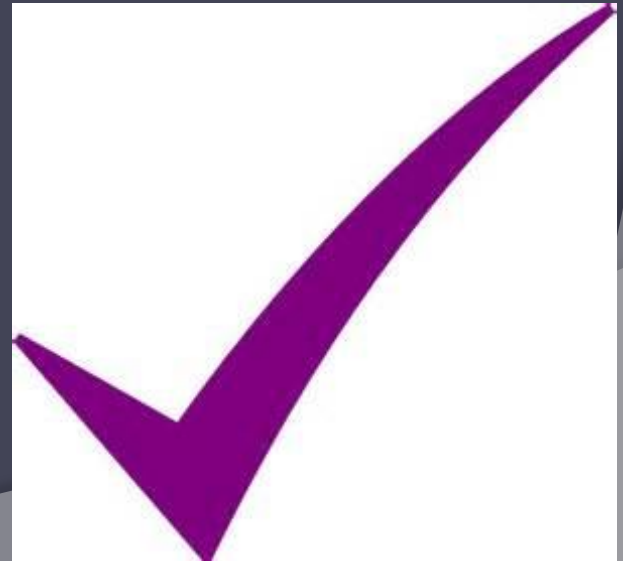
Testimony of City's Senior IT Systems Specialist

- Will testify about how the body-camera program works
- How footage cannot be altered by the officer who downloads it onto the system
- That the video can be altered if downloaded to disc or to some other device
- That the video in the system is the same that has been produced to Plaintiff



Recommendation

- Basic foundation will cover large volume of cases
- Certain cases accuracy of video will be more strongly challenged
- Suggest attending training led by reconstructionists and other experts in the field of videography



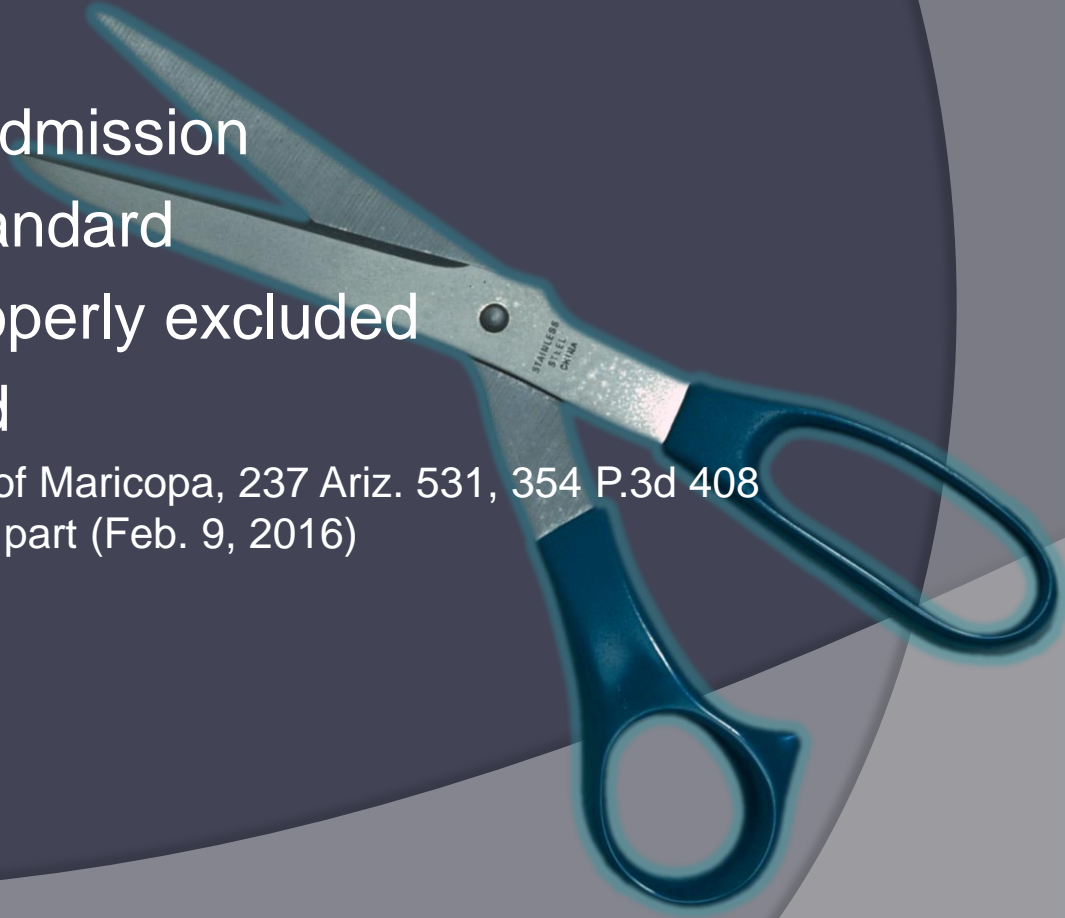
State v. Haight-Gyuro, 218 Ariz. 356, 186 P.3d 33 (App. 2008) - authentication



- Case dealt with surveillance video in a store
- Court declined to adopt a rigid approach to authentication
- Question is whether there is “sufficient evidence to support a jury finding that the evidence is what its proponent claims to be”
- Court should consider unique facts and circumstances of each case
- Rule 901(b) - examples, not the only means to authenticate

Cropped Video

- State did not crop the video
- Footage taken by a witness, who cropped, sent, then deleted
- Trial court precluded admission
- Abuse of discretion standard
- Majority held video properly excluded
- Judge Howe dissented
 - *State v. Steinle* ex rel. County of Maricopa, 237 Ariz. 531, 354 P.3d 408 (App. 2015), review granted in part (Feb. 9, 2016)



Using Portions of Video

- A portion of a video that purported to show the defendant stabbing the victim is considered a “statement” for purposes of the rule that allowed the defendant to require the introduction of the complete video under the rule of completeness.
- *State v. Steinle* ex rel. County of Maricopa, 237 Ariz. 531, 354 P.3d 408 (App. 2015), review granted in part (Feb. 9, 2016)



Redaction

Redaction



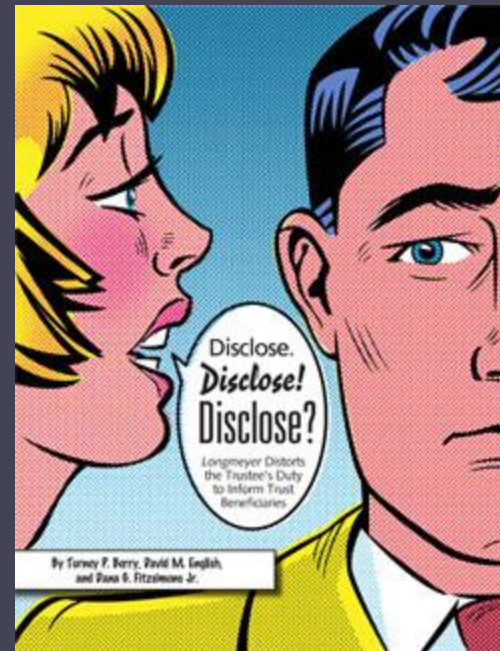
- Prior to disclosure to defense
 - A.R.S. § 13-4434 – victim identifying or locating information
 - Requires review, identifying need for redaction, redaction and rendering
 - Redaction software needed (cost)
 - Software compatibility
 - Software requires a lot of storage (additional hardware)
 - View of the Mobile Data Terminal may contain personally identifying information or information about people other than the defendant
 - Minimum time to render is real time up to 1.5 x length (and computer not available during render)
 - Training to learn how to use software

Redaction

- Languages other than English may require translation.
- Camera at night can become glorified audio recording device (impacted by wind, clothing, gun hand, clearing on radio, etc.).

Disclosure

- AZ Rules of Criminal Procedure 15.1
- *Brady v. Maryland*
- Mechanism to disclose
 - Disc
 - Portal
 - Email
 - Cloud



Additional Redaction Prior to Trial

- Preliminary Breath Tests
- *Miranda* issues
- Evidence kept out as a result of pre-trial motions
- Admissions (defendant discussing priors)

Public Records - Example

- Two hours to create blurs
- Three layers of blur
- Two weeks to complete with other duties
- Half an hour to render
- Audio track redacted and rendered – five minutes
- Total time redacting eight minute video was 2 hours and 45 minutes



Courtroom

Playing Video in Court



- Ensure hardware is available
- Audio may be different based on size of room
- Copy for viewing by jury during deliberation
- A copy must stay with court file in case of appeal
- Need to educate jurors about reality of videos (it's not COPS)
- Lack of video may cause reasonable doubt

Jury Instructions

Modeled after Standard Criminal 4 – Evidence to Be Considered

You are to determine the facts in the case from the evidence presented in court. Video evidence may have been redacted. You are not to consider what may have been redacted nor draw conclusions in favor of, nor inferences against, either party based on the redaction.

War Stories

Anecdotal Information

- Lack of video is hurting some cases
- Video exists but doesn't capture everything (think JFK shooting)
- Helping in some cases (officer shooting-showed shooting was justified and quelled public)
- Multiple officers with multiple cameras multiplies hours of video review and redaction
- Unrepresented defendants and disclosure - need to provide a mechanism for *pro per* defendants to review if they don't have one (can occur for defense attorney also)

Attempted Armed Robbery



- Attempted drug rip-off.
- Officers were new and forgot to turn camera on.
- One of the robbery victims, who had set up the deal that went bad, was scared and crying when the officer spoke to him at the scene.
- Robbery victim had a different demeanor at trial.
- After a not guilty verdict, the jury said they thought the robbery victim was the robber, not the victim, but had they been able to see his demeanor it may have been a different outcome.

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